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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

STATE OF IOWA, *Complainant*,
vs.
STATE OF ILLINOIS, *Defendant*.
No. 5, Original.

BRIEF AND ARGUMENT OF THE STATE OF IOWA IN OPPOSITION TO MOTION TO SET ASIDE ORDER CONFIRMING COMMISSIONERS REPORT.

JOHN Y. STONE, Attorney General of the State of Iowa.
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WM. SEMS & CO., PRINTERS, KNOXVILLE, IA.

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I.

STATEMENT OF FACTS.

The facts connected with this controversy are stated in the opinion heretofore rendered by this Honorable Court in this cause, and reported in the thirteen Supreme Court Reporter, page 239. The controversy arises between the State of Iowa and the State of Illinois as to the boundary line between said States where same are separated by the Mississippi river at some nine points on said river where bridges cross said river connecting the said States of Iowa and Illinois.

This Court by opinion rendered January 3d, 1893, found that the boundary line which separates said States is "The middle of the main channel of the river," and by decree duly entered, provided "That the boundary line between the State of Iowa and the State of Illinois, is the middle of the main navigable channel of the Mississippi river," and the decree further provided, "That the boundary line should be ascertained and designated by a commission consisting of three competent persons to be named by the Court, upon suggestion of counsel, and be required to make the proper examination, and to delineate by maps prepared for that purpose the true line as determined by this court."

In pursuance of the order and decree of this Court, and by agreement entered into by the respective counsel for the said States of Iowa and Illinois, a commission composed of Montgomery Meigs, John R. Carpenter and Albert Wempner was appointed by order entered on the 7th day of March, 1893. Said Commissioners duly qualified, and on the 23d day of March, 1893, completed their report in writing, so far as the boundary line at the Keokuk and Hamilton bridge was concerned, attached thereto a map designating such line, and plainly marked on the structure of the Keokuk and Hamilton bridge said boundary line, and forwarded said report to be filed with the clerk of this Court. On the 26th day of March, 1893, the Attorney General of the State of Illinois, by telegram, authorized Mr. W. I. Hayes, a member of the bar of this Court, to appear on behalf of the State of Illinois and agree that a decree might be entered confirming the report of said commissioners. The report of said commissioners was duly filed on the 30th day of March, 1893, and on the 10th day of April, 1893, this Court, by decree duly entered, confirmed and approved the report of said commissioners as to the location of the boundary line between said States at the Keokuk and Hamilton bridge.

This order having been entered on the 10th day of April, 1893, was during the existence and continuance of the October term, 1892.

The decree of this Court confirming the report of the commissioners on the date last above mentioned remained unquestioned, and no proceedings of any kind or character were instituted to change, alter or vacate same until on the 11th day of October, 1893, when the State of Illinois filed the two motions in controversy. One of said motions asked for leave to file a motion to set aside the order confirming said decree. The other motion, supported by affidavits, asked that the report of the commissioners be set aside. This latter motion is of a summary character, is supported by affidavit, and seeks to set aside a final decree of this court rendered during the October term, 1892.

The grounds upon which the State of Illinois seeks to set aside said decree are :

1st. That the State of Illinois had no notice of the action of the Court in confirming the report of the commissioners.

2d. That the commissioners either wilfully disregarded the decision and decree of this Court, or totally misunderstood same.

The State of Iowa on its part, contends :

1st. That the decree of this Court confirming the report of the commissioners, having been entered during the existence and continuance of the October term, 1892, of this Court, said decree being final, and no proceedings having been instituted to set aside, change or modify said decree during the term which same was rendered, this Court has no jurisdiction in this proceeding to grant the relief asked on behalf of the State of Illinois.

2d. The State of Iowa contends that the motion to con-

firm the report of the commissioners, and the decree of this Court entered in accordance with said motion, was upon full notice to the State of Illinois, and the order and decree of this Court confirming the report of the commissioners was made at the request of, and with the consent of, the State of Illinois, through its Attorney General.

3d. That upon the merits of the controversy it clearly appears that the commissioners followed the opinion of this Court, understood same, and located the boundary line as between said State of Iowa and said State of Illinois, in strict accordance with said opinion.

We desire to present to the Court the reasons why we believe the report of the commissioners should be sustained, and the motion of the State of Illinois should be overruled upon each of the foregoing propositions.

II.

THIS COURT HAS NO JURISDICTION IN THIS PROCEEDING TO GRANT THE RELIEF ASKED BY THE STATE OF ILLINOIS.

The proceeding instituted by the State of Illinois to set aside the decree of this court confirming the report of the commissioners, and permanently establishing the boundary line as between the State of Iowa and the State of Illinois, is not an original action instituted by filing a complaint, and based upon the ground of fraud, but is a summary motion supported by affidavits.

We contend that the decree entered in this cause confirming the report of the commissioners was in its nature a final judgment; that if it so be that said decree was final in its character, this court has no power to change, altar or modify same after the final adjournment of the court at the term at which said judgment or decree was entered.

The court will remember that in this proceeding there are nine bridges crossing the Mississippi river between

the States of Iowa and Illinois. That the original decree contemplated the establishing of a boundary line between said states at each of said bridges. That the decree of April 10th, 1893, modified the original decree to the extent that the commissioners having established the bounday line at the point of the Keokuk and Hamilton bridge said line so located, was confirmed, and the commissioners were ordered to proceed with convenient speed to measure and locate the boundary line at the other points contemplated in said proceeding.

At the date of this order the commissioners had located and marked the boundary line as between said states on the Keokuk and Hamilton bridge. So far as this particular bridge was concerned after their report was confirmed they had no further duties to perform. This report having been duly filed with the clerk was, with the consent of the interested parties, duly confirmed by judgment of this court.

We therefore submit, that so far as the controversy concerning the boundary line at the Keokuk and Hamilton bridge is concerned, it was definitely and finally determined by the report of said commissioners. There were no further proceedings to be had by this court with reference to the boundary line at this point. There was nothing further to be done by the commissioners in pursuence of the order of this court. The boundary line as indicated by them was plainly marked upon the bridge, a map indicating the boundary line accompanied the report of the commissioners, and by filing same became a part of the records of this court. There was therefore, a final, definite, and complete determination of said boundary line at the said Keokuk and Hamilton bridge.

We contend that this finding and decree was final, and of such a character that same could not be changed, modified or set aside upon motion, unless the motion was filed

or determined during the term of court at which said judgment was rendered.

This court in case of Bevy vs. Russell, 19 How. 285, in an opinion by Mr. Justice Wayne, defines e final decree as follows :

"When a decree finally decides and disposes of the whole merits of the case and reserves no further question or direction for the future judgment of the court so that it will not be necessary to bring the case again before the couat for its final decision, it is a final decree."

We submit that so far as the boundry line between the State of Iowa and the State of Illinois is concerned, the judgment confirming the finding of the commissioners finally decides and disposes of the whole merits of the case as to that particular location and that it was not necessary to bring the said cause upon this particular point, again before this court for final decision.

In the recent case of Central Trust Co. vs. Grant Locomotive Works, 10 Sup. Ct. Rep. 741, 135 U. S. 207, this court, in an opinion delivered by Chief Justice Fuller, collated a number of authorities in determining what were final judgments and decrees. In this particular case in a foreclosure proceeding, the ownership and value of certain locomotives, was determined upon a petition of intervention. This court held such determination to be a final decree and in thc course of the opinion it was said :

"If these orders were final decrees, the court could not vacate them of its own motion after the close of the October term, 1883. McMicken vs. Perin, 18 How. 507-511. We think they were final. They determined the ownership of the locomotives, and the right to their possession; that they were essential to the operation of the roads by the receiver, and should be purchased by him; that certain designated amounts should be paid for the rentals and the

purchase price, which amounts were made a charge upon the earnings, income and property of the T. C. & St. L. R R. Co. * * * They were therefore final in their nature, and made upon matters distinct from the general subject of litigation—the foreclosure of the mortgages. In Trustees vs. Greenough, 105 U. S. 527, an appeal from an order for the allowance of costs and expenses to a complainant, suing on behalf of a trust fund, was sustained. In Hinckley vs. Railroad Co., 94 U. S., 467, a receiver was allowed to appeal from a decree against him to pay a sum of money in the cause in which he was appointed. In Williams vs. Morgan, 111 U. S,' 684, a decree in a foreclosure suit, fixing the compensation to be paid to the trustees under a mortgage from the fund realized from the sale, was held to be a final decree as to that matter. And in Fosdick vs. Schall, 99 U. S.. 235, a decree upon an intervening petition in respect to certain cars used by a railroad company under a contract with the manufacturer was so treated. There was a fund in court in that case, but in principle the orders here are the same. And see In re Farmers' Loan & Trust Co., 129 U. S., 206-13. "

It will be seen that in the above entitled cause certain *orders* made in connection with the ownership of some locomotives were held to be final decrees, and the reason of the opinion seems to be that said orders, so far as said locomotives were concerned, were final, and the court by said orders disposed of the particular property in that controvery.

So we say in the case at bar, that the order of this court confirming the report of the commissioners as to the location of the boundary line between Keokuk, Iowa, and Hamilton, Illinois, was finally disposed of and no other proceedings on the part of the court, or of the commissioners, was necessary to fully and completely determine said boundary line at said point.

It seems to be well established, not only by the decisions of this court, but as a general proposition, that after the final adjournment of a court at the close of any specific term the jurisdiction of the court over controversies that have been finally disposed of by final judgment or decree duly entered, ceases and determines, and there is no authority vested in the courts to change, alter or modify their judgments or decrees except upon bill in equity stating sufficient cause to grant relief upon the ground of fraud.

In case of Bronson vs. Schulten, 104 U. S., 411, Mr. Justice Miller, in delivering the opinion of the court, announces the following proposition:

"Does the power of the court over its own judgment, exercised in a summary manner on motion, after the term at which it was rendered, extend beyond this?

In this country all courts have terms and vacations. The time of the commencement of every term, if there be half a dozen a year, is fixed by statute, and the end of it by the final adjournment of the court for that term. This is the case with regard to all the courts of the United States, and if there be exceptions in the state courts, they are unimportant. It is a general rule of the law that all judgments, decrees or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them during the term at which they are rendered or entered of record, and they may then be set aside, vacated, modified or annulled by that court.

But it is a rule equally well established, that after the term has ended all final judgments and decrees of the court pass beyond its control, unless steps be taken during that term, by motion or otherwise, to set aside, modify or correct them, and if errors exist, they can only be corrected by such proceeding by a writ of er-

ror or appeal as may be allowed in a court, which, by law, can review the decision. *So strongly has this principle been upheld by this court, that while realizing that there is no court which can review its decision. it has invariably refused all applications for rehearing made after the adjournment of the court for the term at which the judgment was rendered. And this is placed upon the ground that the case has passed beyond the control of the court.*"

In support of the foregoing the following authorities are cited:

Brooks vs. R. R. Co., 102 U. S , 107.

Public Schools vs. Walker, 9 Wall , 603.

Brown vs. Aspden, 14 How., 25.

Cameron vs, McRoberts, 3 Wheat, 591.

Sibbald vs. U. S,, 12 Pet., 488.

U. S. vs. The Big Glamorgan, 2 Curt., C. C , 236.

Bradford vs. Patterson, 1 A. K., Marsh, (Ky.,) 464.

Ballard vs. Davis, 3 J. J., Marsh. (Ky.,) 656.

In case of Tyler vs. Magwire, 17 Wall., 283, this court in an opinion by Mr. Justice Clifford, said:

"Rehearings are never granted where a final decree has been entered and the mandate sent down, unless the application is made at the same term, except in cases of fraud. Appellate power is exercised over the proceedings of subordinate courts, and not over the judgments or decrees of the appellate court, and the express decision of this court in several cases is that 'The court has no power to review its decisions, whether in a case at law or in equity, and that a final decree in equity is as conclusive as a judgment at law,' which is all that need be said upon the subject."

We therefore respectfully submit that the order and decree confirming the report of the commissioners was final in its character; that no proceedings were instituted during the term in which said order was made, and that

at this time in this proceeding, this court has no jurisdiction to grant the relief asked by the state of Illinois.

III.

THE ORDER COMPLAINED OF WAS ENTERED UPON NOTICE AND BY AGREEMENT ON THE PART OF THE STATE OF ILLINOIS.

It appears from the affidavit of Mr. Walter I. Hayes, a member of the bar of this court, that in asking for the confirmation of the report of the commissioners, he did so at the joint request of the state of Iowa and the state of Illinois. At the time the motion asking for a confirmation of the report of the commissioners was filed—the record of this court, as made in the order granting permission to file said motion under date March 30, 1893, recites that Mr. Walter I. Hayes appeared in "behalf of counsel," clearly indicating that his appearance was in behalf of counsel for both parties.

It is significant that counsel on behalf of the state of Illinois have filed no paper which indicates that the confirmation was made without notice to them. The Honorable Attorney General of the state of Illinois does not file an affidavit in which he undertakes to say that he had no notice or knowledge of the filing of the report, or that a motion to confirm said report would be presented to this court.

On the contrary it expressly appears that a telegram bearing the signature of M. T. Malony, Attorney General for the state of Illinois, was directed to, and received by, Mr, Hayes, which telegram, in express and concise terms, authorizes and directs Mr, Hayes to appear in behalf of the state of Illinois and consent to a confirmation of the report of the commissioners. The language of the telegram is not ambiguous and is subject to but one construction, and is as follows:

"You are authorized to appear in Supreme Court of United States in case of Iowa vs. Illinois, and consent to the confirmation of the report of the commissioners as to line at Keokuk and Hamilton bridge."

The report bears date March 23rd, 1893. At that date there had been plainly marked upon the Keokuk and Hamilton bridge the boundary line. Subsequent to the sending of this telegram, the report was filed. In pursuance of the telegram and the authority therein contained, Mr. Hayes on behalf of the state of Iowa moved for a confirmation of the report, and under the authority of the above telegram consented for the state of Illinois to the confirmation of same, and on the 10th day of April, 1893, an order and decree of this court was made confirming the report of said commissioners.

It appears by the affidavit of Mr. George Edmunds, on behalf of the state of Iowa, that he was in the city of Springfield, Illinois, on the first or third day of April, 1893, eight days prior to the order confirming said report; that at said time and place the fact that the report had been filed was indicated by Mr. Edmunds to the Attorney General of the state of Illinois.

We can conceive of no legal or equitable principle which would relieve the state of Illinois from the action of its accredited agent.

The decrees and judgments of courts cannot be set aside for mere acts of negligence or oversight on the part of the parties to a controversy, and we believe, that as the merits of this controversy will show, the Attorney General of the state of Illinois was fully justified in agreeing to a confirmation of said report, and had it not been for mere local feeling which has become unduly excited over the amount of property to be taxed by the respective municipalities in Iowa and Illinois, the action of the Attorney General of Illinois in consenting to the confirmation of said report would have remained unquestioned.

In any event counsel having consented to the order of confirmation, the decree of this court having been entered in pursuance of said consent, we submit that the state of Illlnois is without redress upon this proposition.

IV.

MERITS OF THE COVTROVERSY.

We desire to submit to the court a few suggestions as to the merits of this controversy.

The opinion heretofore rendered by this court in this cause in clear, concise and unambiguous language defines the boundary line as between the state of Iowa and state of Illinois. After an examination of the leading authorities upon international law, this court says:

"The true line in navigable rivers between the states of the Union which separates the jurisdiction of one from the other, is the middle of the main channel of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is, to the mid-channel, and if there be several channels, to the middle of the principle one, or rather the one usually followed."

And in the course of the decree it was ordered: "That the boundary line between the state of Iowa and state of Illinois is the middle of the main navigable channel of the Mississippi river."

In is a furthor part of the opinion it was determined: "That the line between the territory now comprising the state of Iowa and the state of Illinois was defined in the treaty between England, France and Spain in 1763 as the middle oftne "River Mississippi." That by treaty of Paris between Great Britian and the United States of date 1783, the boundary line remained the same as was fixed by the treaty of 1763, to-wit: The middle of the "River Mississippi." That by act of congress of date April 18, 1818, known as the "Act Enabling the People of Illinois to

Form a State Constitution," the boundary line was described as the middle of the Mississippi river"

We therefore contend that the boundary line as between the state of Illinois and the state of Iowa is not to be determined by the condition of the bed of the Mississippi river at the present time, especially, as within the memory of many living witnesses, substantial changes have been made in the bed of said river by artifical means as the result of the construction of the Des Moines Rapids canal, the Keokuk and Hamilton bridge and extended approaches to said bridge built from the original Iowa shore and Illinois shore, but that said boundry line remains as same was fixed either in the treaty of 1763, 1783 or by act of congress of date 1818. We do not understand that the court has laid down any new principles in this case, or reversed its former opinions, as, when a boundary line of this character is fixed.

In the case of Missouri vs. Kentucky, 11 Wall. 401, this court through Mr. Justice Davis, had occasion to determine when the boundary line of a state was fixed, and in the course of that opinion says :

"It is unnecessary, for the purpose of this suit, to consider whether, on general principles, the middle of the channel of the navigable river which divides co-terminous states, is not the true boundary between them, in the absence of express agreement to the contrary, because the treaty between France, Spain, and England, in February, 1763, stipulated that the middle of the river Mississippi should be the boundary between the British and French territories on the continent of North America. *And this line, established by the only sovereign powers at the time interested in the subject, has remained ever since as they settled it.* It was recognized by the treaty of peace with Great Britain of 1783, and by different treaties since then, the last o.

which resulted in the acquisition of the Territory of Louisiana (embracing the country west of the Mississippi) by the United States in 1803. The boundaries of Missouri, when she was admitted into the Union as a state in 1820, were fixed on this basis, as were those of Arkansas in 1836. And Kentucky succeeded, in 1792, to the ancient right and possession of Virginia, which extended, by virtue of of these treaties, to the middle of the bed of the Mississippi river. It follows, therefore, that if Wolf Island, in 1763, or in 1820, or at any intermediate period between these dates, was east of this line, the jurisdiction of Kentucky rightfully attached to it. *If the river has subsequently turned its course, and now runs east of the island, the status of the parties to this controversy is not altered by it*, for the channel which the river abandoned remains, as before, the boundary between the states, and the island does not, in consequence of this action of the water, change its owner."

In the recent case of State of Nebraska vs. State of Iowa, reported in 145 U. S. 519, 12 S. C. R. 396, this court had occasion to announce certain rules concerning the boundary line as between states when same is marked by a navigable river, and while the contention in that case was as to the effect of a gradual accretion or degradation of the banks of the river, yet the court announced certain rules that are applicable to the case at bar. It was said by this court through Mr. Justice Brewer :

"It is equally well settled that where a stream, which is a boundary, *from any cause* suddenly abandons its old and seeks a new bed, *such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein.*" This sudden and rapid change of channel is termed in the law, "avulsion." In Gould, Waters, Sec. 159, it is said : "But if the change is violent and visible, *and arises*

from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two states." See cases cited.

In the case at bar the change in the bed and channel of the Mississippi river has been from purely artificial causes. The changes made in the banks of the river are clearly indicated by the dykes and fills constructed in the various bridge and canal improvements made in the vicinity of the line in controversy.

The condition of the bed of the Mississippi river at the point crossed by the Keokuk and Hamilton bridge seems to be of a permanent and unchanged character. The affidavit and report of the government engineers. Meigs and Carpenter, (Complainant's record – 4—) a copy of which was furnished by said commissioners to the clerk of this court and the Attorney Generals of the states of Iowa and Illinois, describes the bed of the Mississippi river as of solid rock; that the current coming from the Rapids is of such a character as to keep said bed free and clear from accumulations, and with the exception that there may be occasionally soft places in the rock in which there have been worn depressions by the action of the water and the ice, the bed of the Mississippi river at this point has undoubtedly remained in substantially the condition that it now is for time immemorial.

It appears that before the construction of the Keokuk and Hamilton bridge the Illinois shore was 700 feet east of the present easterly abutment of the bridge; that there was located upon said shore railroad depots and steamboat landings; that large ferry boats and other boats engaged in the ordinary commerce of said river landed at said Illinois landing, receiving and discharging freight, and that the river between the shore at Keokuk, Iowa, and Hamilton, Illinois, was navigable at all seasons of navigation.

The test of the boundary line as indicated by this court seems to be navigability, and this main arm of the Mississippi river west of the shore of island No. 4, was, prior to the artificial obstructions placed in same, navigable, and navigated, from shore to shore.

The plat presented by the state of Illinois, as prepared by Engineer McMath, can aid but little in this controversy. It appears from the statement of the commissioners, (complainant's record, p. 13,) and other despositions, that the deep water indicated on said map at station 1650 is a pocket in the bed of the river which fades into shallows north and south of said depression. That the shallow water at station 1400 is occasioned by the soundings having been taken upon an old crib left in the river, and the shallow water at station 950 is occasioned by soundings having been taken upon rock thrown in the river to support a pier of the bridge, while the soundings taken at stations 2050, 2100, 2150, (west end,) went to the bottom of the channel, excavated by the United States since the bridge was built. With these exceptions there would seem to be a depth in the bed of the river along the entire distance between the east and west abutment of said bridge of considerably over three feet. and when it is borne in mind that these soundings were made at a time the river was exceptionally low and was only four-tenths of a foot above low water mark; when it is further considered that boats which navigate the Mississippi river in a low stage of water can run over thirty inches, and most, if not all of them, can run in three feet of water, it will be seen that the plat of Engineer McMath, with the exception of the artificial obstructions above indicated, discloses that the said river is navigable from abutment to abutment.

If the court on the other hand will examine the plat attached to the affidavit of O. S. Willey, who is now in

the employ of the United States government in the office at Keokuk, Iowa, it will be demonstrated that the bed of the river, as shown by said plat and survey made prior to the construction of the Keokuk and Hamilton bridge, that at all points between the east and west abutment of said bridge at extreme low water there is an excess of three feet of water in the bed of said river. That the medium stage of water is six feet above low water; that during the medium stage of water there is no point beneath the Keokuk and Hamilton bridge where there is not nine feet of water. This certainly would indicate that the main channel of the Mississippi river, the main arm of the river between Keokuk, Iowa, and Hamilton, Illinois, is according to the great weight of the affidavits presented by the state of Iowa, and is, but for artificial obstructions, navigable from abutment to abutment.

We do not desire to go into the details of the affidavits at great length, but we call the attention of the court to the character of the men who compose the commission which located the boundary line. Two of the commissioners are now in the employ of the United States government. Their employment has caused them to be peculiarly qualified to have a knowledge as to the bed of the Mississippi river where crossed by the Keokuk and Hamilton bridge. Major Meigs, an engineer of more than ordinary prominence, and a man prominent in the improvement of the Mississippi river, who is assistant in charge ot the improvement of the Mississippi river from Quincy, Illinois, to Keithsburg, Illinois, a distance *100* miles, was as well qualified as any man in the United States to perform the duties of such commissioner.

Mr. John R. Carpenter, also in the government employ, had the same familiarity with the subject as his colleague, Major Meigs, while Captain Wempner, a pilot of long standing, was peculiarly adapted, by occupation and

experience, to assist in the duties the commissioners were to perform. It was by reason of the high character and standing of the commissioners that the representatives of the state of Illinois and state of Iowa consented to their appointment, and we submit that their detailed statement should have more than ordinary weight with the court in determining whether or not the commissioners properly performed their duties

The motion on behalf of the state of Illinois is supported by the affidavits of but five persons who claim any familiarity with the bed and channel of the Mississippi river. An examination of each of those affidavits should convince the court that, in the first place, affiants do not agree as to the location of the channel, and in the second place, they are of such a vague and indefinite character that a boundary line of a state could hardly be determined upon the statements contained in their affidavits.

For instance, the plat as made by Engineer McMath would indicate a channel from 400 to 600 feet wide.

H. S. Brown, id his affidavit says: "The deepest water is 250 feet from the Iowa shore."

Sobert Farris in his affidavit says; "The west line of the channel was where the pivot pier of the bridge now stands and extends 400 feet east from that point."

Owens makes the same statement in his affidavit. Wagoner makes the pivot pier the west bank of the channel and extends it 300 feet east.

McMath's profile shows the deep water as between 400 feet east of the pivot pier and deeper 250 feet east of that point than it is 250 feet west, thus fixing the deep water channel east of the point fixed by the pilots.

On this profile attention is called to the fact that there is deeper water right west of the commissioners' mark than at the pivot pier, which is given by some of the pilots

as being the west bank of the channel. None of the pilots in their affidavits explain the navigability of the river with reference to the ferry-boat landing and warehouses located upon the Illinois shore prior to the construction of the Keokuk and Hamilton bridge.

Captain Wempner, whose affidavit of 1891 is attached to the petition on behalf of the state of Illinois, by his affidavit (Complainant's record page 13) explains that a portion of his affidavit was made through inadvertence, and clearly shows by his personal knowledge that the river at the point in controversy was navigable from bank to bank.

In addition to the affidavits of the pilots, the affidavit of J. L. Miller, an attorney at law of Hamilton, Illinois, is produced. Mr. Miller seems to have been particularly industrious in engaging his brother-lawyers in private conversation, and then placing his opinion as to the effect of these conversations in the form of an affidavit.

We submit that an affidavit of this character, which does not contain any statement of the facts as to the actual condition of the river, can have no weight, and can shed no light upon this controversy.

The opinion of the Court of Appeals of the State of Illinois in case of Bertschi et al. vs. Keokuk and Hamilton Bridge Co., is attached to the petition on behalf of the state of Illinois. As this opinion was reversed by the Supreme Court of Illinois in the case reported in 34 N. E. 432, the reversal being upon the ground that the authorities of Illinois had taxed more than the proper proportion of the bridge in question, this opinion should have no weight in this controversy.

As opposed to the affidavits presented by the State of Illinois, the state of Iowa presents the affidavits of some twenty-five witnesses. These witnesses detail the facts within their personal knowledge. The detailed statement

as made by the commissioners will give the court a clear idea of the bed of the main arm of the Mississippi river at the point in controversy.

It would appear by the clear weight of the affidavits, and the state of Illinois has offered no affidavits to the contrary, that the great volume of water flowing down the bed of the Mississippi river passes between the west bank of island No. 4 and the east bank of the Iowa shore. That the bed of the river at this point is of solid rock, not subject to changes by deposit, and that said bed between said points is navigable during all seasons of navigation.

One principle ground for setting aside the commissioners' report as charged by the state of Illinois is that the commissioners in locating said line followed the rule laid down by the opinion of the Supreme Court of Iowa in case of Dunleith & Dubuque Bridge Co., 55 Ia. 558, and located the boundary midway between the Illinois and Iowa banks.

The commissioners clearly negative this in their affidavits and statement, and demonstrate that the line was not measured with reference to the banks, but said boundary line was located entirely with reference to the navigability of the stream. (Complainant's record, page 10.) The measurement in Illinois was made from 200 to 250 feet west of the shore line, and the measurement from the Iowa shore was made some fifty feet east of the shore line, and these two points west of the shore of Island No. 4, and east of the Iowa shore, were located with reference to the navigability of the river at and between said points. The result of their investigations and measurements gives to the state of Illinois some 1661 feet of bridge and approach from island No. 4, and about 1481 feet of bridge and approach to the state of Iowa, and as shown by the overwhelming weight of affidavits, the east and west starting point of said line and the water between same, as it ex-

isted before the artificial obstructions described in the affidavits, was navigable for all kinds of boats during all seasons of navigation.

Mr. H. B. Whitney in his affidavit (Complainant's record 39) and S. M. Ball, in his affidavit (Complainant's record 37,) say, that during the navigable seasons there was from five to seven feet of water at this point. Mr. W. R. Hamilton in his affidavit, and Judge Edmunds in his affidavit, (Complainant's record 28 and 31,) describe the character of the landing and the depth of water as same existed in the vicinity of the warehouse located prior to the construction of the bridge on the west bank of island No 4.

David Tipton in his affidavit (Complainant's record 39), and some of the other witnesses state that the water was deeper and the landing was better on the Illinois shore than it was on the Iowa shore.

Mr. Myers in his affidavit (Complainant's record 39) states that the boats would run up the middle of the river midway from shore to shore.

The affidavits of Charles Bartlett (Complainant's record p. 42), William Dobler (Complainant's record p. 54), Jacob Heinz (Complainant's record page 50), C. C. Carpenter (Complainant's record page 40), H. R. Dickinson (Complainant's record page 56) show that even at the present time, notwithatanding the artificial obstructions that have been placed in the river, that steamboats with tows of rafts go from the Iowa shore across to the east abutment of the Keokuk and Hamilton bridge, and land said rafts, used in the lumber trade, upon the west bank of island No. 4.

The profile of the bed of the river as identified by Mr. Willey, as has been heretofore referred to, shows the water at extreme low water mark, an unusual occurrence, to have been not less than three feet at all points

betwen the Iowa and Illinois shore. A medium stage of water, which is explained by said profile, and as shown by the statement of the commissioners, (Complainant's record, p. 21.) is six feet deeper than the stage of low water.

It would therefore appear by this profile prepared prior to the construction of the bridge, at a time when the artificial obstructions to navigation had not been constructed, that in the medium stage of water there was nine feet at all points as between the objective point taken from the east and west by the commissioners in locating the boundary liue.

The location of this boundary line has been in the nature of an arbitration in which the arbitrators have made their award. It is a disposition of a controversy in a manner well recognized by courts, and one which is sustained when parties enter into an arrangement of this character. We may be pardoned if we cite an expression from this Honorable Court as to the duty of courts in sustaining the settlement of controversies by agreement of the parties. In case of Burchell vs. Marsh, 17 How., 344, this court by Mr. Justice Grier, says:

"Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or in fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award the commencement, not the end, of litigation. In order, says Lord Thurlow, (Knox vs. Symmonds, 1 Ves., Jr., 369,) 'to induce the court to interfere, there must be some-

thing more than an error of judgment, such as corruption in the arbitrator, or gross mistake, either apparent on the face of the award or to be made out by evidence; but in case of mistake, it must be made out to the satisfaction of the arbitrator, and that if it had not happened, he should have made a different award.'"

" Courts should be careful to avoid a wrong use of the word "mistake," and, by making it synonymous with mere error of judgment, assume to themselves an arbitrary power over awards. The same result would follow if the court should treat the arbitrators as guilty of corrupt partiality, merely because their award is not such an one as the chancellor would have given. We are all to prone, perhaps, to impute either weakness of intellect or corrupt motives to those who differ with us in opinion. "

In case of Kimberly vs. Arms, 129 U. S., 355, 9 S. C. R, 359, the case was referred to a master in chancery by agreement. This court in considering the finding of the master gave special weight to the fact that the reference was by agreement. In considering the effect of said finding the court compared same to a finding by arbitration. In the course of the opinion delivered by Mr. Justice Field, the court says:

"But when the parties consent to the reference of a case to a master or other officer to hear and decide all the issues therein, and report his findings, both of fact and of law, and such reference is entered as a rule of the court, the master is clothed with different powers from those which he exercises upon ordinary references, without such consent; and his determinations are not subject to be set aside and be disregarded at the mere discretion of the court. A reference, by consent of parties, of an entire case for the determination of all its issues, though not strictly a submission of the controversy to arbitration, a proceeding which is governed by special rules, is the sub-

mission of a controversy to a tribunal of the parties' own selection, to be governed in its conduct by the ordinary rules applicable to the administration of justice in tribunals established by law. Its findings, like those of an Independent tribunal, are to be taken as presumptively correct, subject, indeed, to be reviewed, uuder the reservations contained in the consent and order of the court, when there has been manifest error in the consideration given to the evidence, or in the application of the law, but not otherwise."

The commissioners who made the findings in this case were in effect arbitrators chosen by the parties. They were appointed at the joint request of the parties interested in the controversy; the names of the commissioners were determined upon by consent of the parties, and their finding as made was agreed to by the representatives of both parties. They were men entirely competent to decide the question submitted to them; their decision is within the authority conferred upon them; the commissioners exhibited to the court their action in detail, which indicates that they acted fairly, impartially and intelligently in the matter, and this being in the nature of an arbitration, we contend that there is no such showing as would authorize the court to interfere with the judgment of the commissioners.

We confidently assert that the record as is disclosed in this proceeding establishes beyond controversy that the main channel of the Mississippi river at the point where crossed by the Keokuk and Hamilton bridge is substantially from the west bank of Island No. 4 to the Iowa shore, and was navigable from bank to bank. That prior to the construction of the government canal, navigation for any considerable distance north of the City of Keokuk and the City of Hamilton was obstructed by reason of the Des Moines rapids, and that boats of all classes and

character engaged in the general commerce of the river, landed with equal freedom at the Iowa and Illinois shore and crossed and recrossed the river without obstruction or hinderance at all places between said points.

The state of Illinois in this controversy seems to have had her rights fully and properly protected. The court in its original opinion laid down a clear and definite rule as to how the boundary line between the states should be ascertained. The states then agreed upon a commission of three honorable gentlemen, each of whom, it appears from the facts in the record, were peculiarly well qualified by occupation, education and experience to determine a question of the character at bar. Their detailed statement clearly indicates not only that they carefully studied, but they appreciated the opinion and the rule as therein announced by this court. Their measurements were made in accordance with their best judgment. The plat indicating such measurements, and the boundary line made thereunder, has become a record of this court. The persons locally interested had full knowledge and information of the location of said boundary line at the time same was made. The proper officer of the state of Illinois authorized and directed a member of this bar to assent to the confirmation of said commissioners' report, under which authority a final decree of this court was rendered confirming the report of said commissioners. It appears by the overwhelming weight of the affidavits that the said boundary line was properly and fairly located. From the 10th of April, 1893, with full knowledge on the part of the authorities of the state of Illinois of the place where said boundary line was located, no steps were taken by them to change or modify the decree of this court as heretofore rendered.

We believe that no showing upon the merits has been made which would entitle the court to change or modify

the confirmation of said report. We further believe that the state of Illinois has no right, and this court has no jurisdiction, at this time in this proceeding, to grant the relief demanded.

The local contention between the municipalities bordering the river at this point should be finally and definitely determined, as we believe this court has already done.

We therefore respectfully but earnestly submit that the motion on behalf of the state of Illinois should be overruled and the petition supporting same should be dismissed.

Respecnfully submitted.

JOHN Y. STONE,
Attorney General of the State of Iowa.
JOHN F. LACEY,
FELIX T. HUGHES,
JAMES C. DAVIS,
Of Counsel.

[redacted]

IN THE
Supreme Court of the United States,

October Term, 1893

STATE OF IOWA, *Complainant.*

vs.

STATE OF ILLINOIS, *Defendant.*

ORIGINAL SUIT IN EQUITY NO. 5.

STATEMENT AND AFFIDAVITS ON BEHALF OF THE STATE OF IOWA IN RESPONSE TO NEW MATTER SET OUT BY STATE OF ILLINOIS IN ITS REPLY.

I.

The State of Iowa respectfully asks leave to submit the affidavits of Mr. John H. Cole and Mr. George Edmunds in response to the new matter set out in the affidavit of Mr. Moloney on behalf of the State of Illinois.

Counsel for the State of Iowa regret the complication which seems to have arisen in the office of the Attorney General of the State of Illinois. It is due to counsel on behalf of the State of Iowa to further say that the matter set forth in the affidavit of Mr. Moloney of date November 14th, 1893, was a complete surprise to the several counsel of the State of Iowa.

The conduct of this case, from its inception, has been amicable in its character. The progress of the cause in matters requiring notice to counsel has been entirely informal. Mr. George Edmunds, an attorney of high standing and long practice at the bar of Illinois, by reason of his personal acquaintance with Attorney General Hunt, and the successor of Attorney General Hunt, Mr. Moloney, has obtained from counsel for the State of Illinois agreements which have been made as the cause progressed, and when notice was necessary, has informed the Attorney General of the State of Illinois when matters occurred which required notice.

It was with some reluctance that counsel for the State of Iowa have felt obliged to set out the affidavit of Mr. Edmunds of date November 22d, 1893, but as same clearly and fairly details the facts as they actually occurred, it was deemed a duty upon the part of counsel that the Court should have this information. It has appeared to counsel for the State of Iowa, and we believe it will so appear to the Court, that from the amicable and friendly character of this controversy that the telegram sent from the Attorney General's office of the State of Illinois, on the 26th day of March, 1893, was entirely proper matter to have been forwarded. The Commission appointed by agreement had made its report; that report, unless fraudulent, would ordinarily be binding upon both parties; the charge made on behalf of the State of Illinois that the confirmation was obtained for the benefit of the Keokuk & Hamilton Bridge Company, is hardly fair in view of the fact that it was a matter of entire indifference to the Bridge Company where the line was located, the purpose being to have it definitely and permanently located at some particular point.

In a controversy of this character the State of Iowa does not desire to obtain any advantage upon a technicality, or have the boundary line located unless same is done strictly in accordance with the decision of this Court, and in accordance with the facts as they actually exist. In this connection, however, we deem it fair to submit to the Court.

1st. That under the circumstances of the case Mr. T. J. Schofield, the Assistant Attorney General of the State of Illinois, was not only authorized, but justified, in sending the telegram in question.

2d. That Judge Edmunds, acting as the Attorney General of the State of Illinois, not knowing the contents of the report in controversy, and in good faith believing that by reason of the amicable nature of the case same would be binding upon both parties, was justified in submitting the question of sending the telegram to Mr. Schofield.

II.

The Court will pardon a brief reference on behalf of the State of Iowa, to the merits of the controversy. We presume if the report of the Commissioners was now presented for the first time to the Court, the Court would confirm same, if it appeared the Commissioners acted in good faith and located the line in accordance with the facts and the rule as to the location of the boundary line as adopted in the opinion promulgated by this Court. In other words, if the report is right upon its merits, independent of the controversy which has arisen in the Attorney General's office of the State of Illinois, it should be confirmed.

Counsel for the State of Illinois misapprehend

the method by which the Commissioners arrived at the boundary line in controversy. On page 17 of the argument in reply it is contended that the Commissioners fixed the shore line and established the boundary line exactly midway between said shore lines. The affidavit of the Commissioners (Com. Rec. 16.) says: "We conclude that under the provisions of the opinion of this Court in the above entitled cause, the main channel of the Mississippi River which was navigable for steamboats that ordinarily navigate said river, eliminating from same recent artificial obstructions, is between a point 500 feet east of the easterly end of said bridge and 200 feet west of the westerly end of said bridge." And while on the plat submmitted by said Commissioners the extreme points from which the boundary line was measured is marked "east bank of river as established by commissioners," and "west bank of river as established by commissioners," their affidavits explain that the easterly bank of the navigable channel as fixed by the commissioners is 200 feet west of the easterly original shore of Island No. 4, in Illinois, and the westerly bank of the navigable channel as fixed by the commissioners is 50 feet east of the original westerly shore in Iowa. The lines marked "east and west bank" as fixed by said commissioners upon said plat being the easterly and westerly limit of the navigable channel as fixed by said commissioners.

In the affidavit of James Campbell, on behalf of the State of Illinois, (Deft's. Rec. 29.) he describes an obstruction 400 feet east of the Iowa shore and about 150 yards below where the Keokuk & Hamilton Bridge now terminates.

The affidavits of H. B. Whitney, (Com. Rec. 38), W. S. Sample, (Com. Rec. 46), John Smith, (Com.

omitting the title of same, venue and jurat, said affidavit is as follows, viz.:

"George Edmunds, being duly sworn, says that some and most of the time from March 20th to March 30th, 1893, deponent was in the office of the Attorney General of Illinois, at the request of the Attorney General and his assistant, endeavoring to perform the duties of the office, in the absence of the Attorney General on business elsewhere, and of the assistant from sickness. That about the 26th of March, 1893, there was delivered at the office a telegram stating that the commissioners in the case of Iowa vs. Illinois had made their report, and asking that the Attorney General have some one appear in the Supreme Court of the United States so that the report could be confirmed at the term then in session. That deponent, in the absence of General Moloney, took the telegram to T. J. Schofield, the Assistant Attorney General of Illinois, and Mr. Schofield telegraphed some one at Washington to appear for Illinois, in the matter. I suppose the telegram was in the name of M. T. Moloney. At this time I had no knowledge of what the report was, or where the line was fixed by said report and did not have until after April 10th, 1893. The deponent has for years been the attorney of the Bridge Co., and now states that during all his connection with that Company his opinion and the feeling of the Bridge Company has been that it was of no consequence to it, the Bridge Co., where the line was fixed, if fixed so as to prevent taxation in both states of the same property."

That affidavit Mr. Moloney should have received on Saturday, November 11th, three days before he

made his affidavit, in this cause, on the 14th of November. If Mr. Moloney received that affidavit he could no doubt have learned that the statements therein were true by inquiring of his assistant, Schofield, or from an inspection of the original telegram at Springfield telegraph office, that the telegram to Hayes was not signed in my handwriting, but was in the handwriting of T. J. Schofield, his assistant.

I further state that I never at any time sent a telegram directed to Hayes, or any other person at Washington, D. C., to which I signed the name of M. T. Moloney, or to which I procured any other person to sign the name of M. T. Moloney.

I further state that I was at the Attorney General's office on either the 1st or 3d of April, 1893. I do not think I saw Mr. Moloney at that time, yet I may have done so, but I did not see Mr Schofield. My belief is it was the 3d of April, from the fact that I find in my letter book a letter dated April 1st and none after that until April 4th. Further our town meeting was on the 4th of April and I think I was at Springfield the day before Town meeting.

Deponent further states that he has always understood this suit to be an amicable one to settle the boundary between the states. It was brought at deponent's suggestion to settle the extent to which each state could tax bridges across the Mississippi River and prevent overlapping of such taxation as for some years had existed at the Keokuk & Hamilton Bridge. with a view to that end deponent prepared a full set of pleadings for such proceedings in this Court, presenting both sides of the case, and submitted to the then Attorney General of Illinois, George Hunt, and asked him to bring suit on behalf of Illinois. Mr.

Hunt took the proposed pleadings and said he would look into the matter. After some days Mr. Hunt returned the proposed pleadings to me, declining to bring the suit, but said if Iowa would bring the suit he would answer for Illinois. I then prepared the pleadings now on file in this cause and the matter was submitted to the Attorney General of Iowa. He signed the bill and I sent a copy of the bill with an answer, (the same as now on file) for Illinois and its cross bill, and forwarded to Attorney General Hunt, at Springfield. He signed the answer and cross bill and Attorney General Stone, of Iowa, signed the answer to cross-bill and replication to answer of Illinois, and I think all were forwarded together to the Clerk of this Court, and filed by him. The effort on my part was by the pleadings to present fully and fairly both sides of the case, having personally no feeling or care and that the Bridge Company that I represented no interest as to particular point in the river at which the line should be established, its interest being in having the line established so that there could be no excuse for either state or local authorities taxing beyond the line so to be fixed.

Deponent further states that Mr. Green, of the late firm of Goudy Green & Goudy, appeared before Judge Gresham, at Chicago, on an application by S. Taber Bayles for an injunction against John W. Bertschi, to enjoin the collection of certain taxes on on said bridge for 1890. Which suit was dismissed and a bill filed in the Hancock Circuit Court in the name of said Bridge Company, against said Bertschi, collector of the County of Hancock, et al. to enjoin said tax of 1890, and on application to Judge Marsh for injunction, said Green appeared, and upon the allowance of said injunction, said Green prayed, an ap-

peall which was perfected, and on the argument in the Appellate Court an argument was filed in the name of Goudy, Green & Goudy, and deponent is of the opinion said Green argued orally, but is not positive. That while the appearance of said Green in said cause was ostensibly for the said Bertschi, collector, deponent is informed by parties at Hamilton, that the City of Hamilton paid the fees and expenses and services in said cause.

Deponent further states that while in the office of Attorney General in March, 1893, performing duties for him, deponent prepared and signed many papers and letters in the name of M. T. Moloney, Attorney General, but in all cases he added the name of T. J. Schofield, Assistant, as he was instructed to do. That deponent believes every paper signed so by him was copied in the letter press book by the proper person in the offce.

G. EDMUNDS.

Subscribed and sworn to, before me, November 22d, 1893.

JOHN D. MILLER,
County Judge, Hancock County, Ill.

That subsequently on the 26 day of November, 1893, said George Edmunds requested a return of said affidavit above referred to, stating in said request that if same was returned he would forward an affidavit slightly modified; that thereupon a letter press impression was made by affiant of said original affidavit of date November 22nd, 1893, and the original of same was returned to said George Edmunds and said George Edmunds subsequent to the return of said original affidavit above referred to forwarded

Rec. 49), Henry Conn, (Com. Rec. 51), H. R. Dickinson, (Com. Rec. 56), John H. Cole, (Com. Rec. 25) all disprove this statement. The profile of Mr. McMath, submitted by defendants, shows that after eliminating artificial obstructions recently placed in the river, that Wagner, Campbell. Brown, Ferris and Owen, (defendants' witnesses) were not correct in their statements either as to channel or deep water, as this profile plainly showed an average depth of water east of the point fixed by all these witnesses as the eastern boundary of the channel, i. e., from 300 to 400 feet east of pivot pier, greater than it is in the channel they describe with the exception of the pocket or hole near station 1600 of said profile.

If the court will now examine this profile and make the allowances for measurements taken on cribs and other artificial obstructions of recent origin, and compare it with the profile of Mr. Willey. (Com. Rec. 21-22), and the correctness of which has not been disputed, they will find that all of the above defendants' witnesses were simply mistaken as to the extent of the channel.

It is to be noted that the learned counsel for the State of Illinois fail to explain the unfairness of the plat as preseuted by McMath, and no denial in any form is made of the facts clearly showing that the soundings in the McMath plat were taken on top of cribs and other artificial obstructions recently placed in the river. No criticism is made as to the entire good faith on the part of the commissioners in making their report. Their competency to perform the work alloted to them is not questioned. It is conceded by counsel for the State of Illinois that the boundary line should be located independent of recent

artificial obstructions. We believe a careful examination of the record will disclose the fact that the merits of the controversy upon the report of the commissioners are wholly in favor of sustaining the report and that the commissioners in locating the boundary line, determined where the main navigable channel of the Mississippi River was located, and fixed the boundary in the middle of said channel.

It is respectfully submitted that the report of the commissioners should stand confirmed.

Respectfully submitted,

JOHN Y. STONE,
Attorney General, State of Iowa.

JOHN F. LACY,
FELIX T. HUGHES,
JAMES C. DAVIS,
Of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant,*
vs.
STATE OF ILLINOIS, *Defendant.*
Original No. 5.

State of Iowa,
Lee County, } ss.

I. John H. Cole, on my oath, duly administered, do depose and say, that I am the same John H. Cole who has heretofore made affidavit in this cause on behalf of the State of Iowa; that my attention has been called to the affidavit of Maurice T. Moloney, of date November 14th 1893, filed on behalf of the State of Illinois, in which Mr. Moloney refers to a telegram sent on the 26th day of March, 1893, to Walter I. Hayes; that said telegram appears to have been sent in my care at Washington, D. C., I state that on the 26th day of March, 1893, I was not in

the City of Washington, D. C., nor upon any other day in said month, but with the exception of possibly a day or two's absence I was continuously in the City of Keokuk, Iowa, where I reside, during the said month of March, 1893; that I do not know why said telegram was sent in my care, and the first knowledge or information that I had that said telegram was sent in my care was when the original telegram was exhibited to me in in connection with the affidavit of Walter I. Hayes, made in this cause; that as I had had correspondence with George Edmunds in the letter hereinafter referred to, written from the City of Keokuk, Iowa, said George Edmunds knew I was not in the City of Washington, D. C., and would therefore not have sent a telegram in my care at said place. That upon inspection of the affidavit, as made by Mr. Moloney in this cause, of date November 14th, 1893, I called upon Mr. George Edmunds at Carthage, Illinois, on the 20th of November, 1893, with a copy of the affidavit of said Moloney for the purpose of ascertaining the facts concerning said telegram; that said Edmunds, upon the said 20th day of November, 1893, detailed to me the circumstances connected with the sending of said telegram, and agreed to forward to the attorneys of the State of Iowa for use in this controversy, an affidavit setting forth said facts in detail; that on the 22d day of November, 1893, said George Edmunds sent to Keokuk, Iowa, an affidavit in his own handwriting, verified before John D. Miller, County Judge of the Hancock County Court of Illinois, which affidavit so forwarded by said George Edmunds, was in words and figures following, to-wit:

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS, } Original.

State of Illinois,
Hancock County. } ss.

George Edmunds, being duly sworn, says that he is father-in-law of T. J. Schofield, the Assistant Attorney General of the State of Illinois, and was in March, last.

That at the request of the Attorney General of Illinois, deponent was at the office of the Attorney General, at Springfield, Illinois, most of the time from the 20th to the 30th of March, 1893, endeavoring to perform the duties of Attorney General. That his performance of such duty was not of his own seeking, but by request to keep the office running in the absence of the Attorney General, Moloney, on business, and absence of said Schofield, his assistant, caused by sickness.

That T. J. Schofield, said assistant, knew dedeponent had for years been attorney of the Keokuk & Hamilton Bridge Company, in Illinois, and that this cause was pending, and when deponent sent the agreement for the appointment of commissioners in this cause to the Attorney General, which he signed, in the opinion of deponent Attorney General Moloney knew the relation deponent held to the Bridge Company. He could have known by inquiring of his assistant.

That on November 10th, 1893, by request, deponent prepared, swore to and sent to Attorney General Moloney, for use by him an affidavit in this cause,

for use in this cause the affidavit of date November 27th, 1893, which is filed in this cause. Affiant states that he is familiar with the handwriting of said George Edmunds; that the letter press copy hereinabove referred to, which is attached hereto marked exhibit "A" and made a part hereof, is in the hand writing of said George Edmunds, and signed by him; that the original of said affidavit cannot be produced for the reason that said George Edmunds has declined to redeliver same for use in this cause. Affiant produces the copy above referred to upon advice of counsel of the state of Iowa in order that this court may be advised as fully as may be of all facts and circumstances connected with said telegram. Affiant further states that on or about the 23rd day of March, 1893, the commissioners heretofore appointed in this cause marked the boundary line between the state of Iowa and the state of Illinois upon the Keokuk and Hamilton bridge, and affiant was informed that the report of the commissioners had been forwarded to Washington. That thereupon, upon the 24th day of March, 1893, affiant wrote to George Edmunds a letter addressed to Springfield, Illinois, informing said George Edmunds of the fact that the report of the commissioners had gone forward and requesting said George Edmunds to have the Attorney General of Illinois authorize counsel to appear for the state of Illinois upon motion to be made by the state of Iowa asking for confirmation of the said report. That subsequent to the writing of said letter, on or about the 25th day of March, 1893, I forwarded a telegram addressed to the Hon. T. J. Schofield, notifying the Attorney General of the state of Illinois that Mr. Walter I. Hayes would present a motion for confirmation of said report on behalf of the state of Iowa; that I

kept no copy of the telegram above referred to and therefore am unable to produce a copy of same; that at the time of the sending of said letter and telegram above referred to I had no knowledge or information that Mr. George Edmunds was acting as Attorney General of the state of Illinois, or that said George Edmunds was in any way connected with the said office of the Attorney General of the state of Illinois; that my reasons for addressing George Edmunds at Springfield, Illinois, was because I had telephoned to Carthage, Illinois, to ascertain the whereabouts of said George Edmunds, and was informed by telephone that he was thenat Springfield, Illinois; that I know the location of the line between the state of Iowa and the state of Illinois as same is marked on the Keokuk and Hamiltom bridge by the commissioners, and same is not in the middle of the Mississippi river as measured from bank to bank, but said line is about ninety feet west of the middle of said river.

J. H. COLE.

Subscribed and sworn to before me this 5th day of December, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS. } Original.

State of Illinois,
Hancock County. } ss.

George Edmunds, being duly sworn, says that at

the request of the Attorney General of Illinois, deponent endeavored to perform the duties of the office of Attorney General of Illinois, to the best of his ability, and in the performance of that duty deponent spent most of his time between the 20th and the 30th day of March, 1893. That by reason of the absence of Attorney General Moloney and the sickness of his assistant, the business of the office was largely behind. That during the time deponent was in said office in that capacity, Mr. Moloney was absent on business of the office most of the time, and his assistant was kept from the office all the time by sickness. That during that time deponent believes he put in an average of ten hours per day while there, answering correspondence and giving opinions, in the name and as the act of the Attorney General. That the job was not one of his own seeking. That in all of his acts as acting Attorney General deponent endeavored to perform the duties as he believed Mr. Moloney would have done it there. Deponent has no means of knowing the amount of correspondence answered or the number of opinions given, but believes it would extend into the hundreds. Every letter and every opinion, deponent believes, was copied in the office, though he did not make the copies. That deponent took no action in the name of the Attorney General that he did not then feel fully authorized to do, though in the mass of work done he may have made mistakes. That deponent did not while connected with said Attorney General office, do any act as attorney of the Keokuk and Hamilton Bridge Company or in its interest. As will be seen by a former affidavit made by me in this cause, this suit was instituted at my suggestion. (At its inception I regarded this suit an

amicable one, to ascertain and mark the boundary between the two states, not to fix any particular line but the true line, the sole interest of the Keokuk and Hamilton Bridge Company being to have the line fixed and known so as to prevent double taxation. In that view and that alone I suggested the pleadings in this cause, fully presenting the case and leaving to the court and commissioners to be appointed to designate the line, it being a matter of indifference to the company I represented at what point the line was fixed.)

G. EDMUNDS.

Subscribed and sworn to before me November 27th, 1893.

JOHN D. MILLER,
County Judge.